

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

CORD FOSTER

PLAINTIFF

vs.

No. 2:95cv008-D-O

FMC CORPORATION

DEFENDANT

MEMORANDUM OPINION

This matter is before the undersigned on the motion of the plaintiff Cord Foster to remand this cause to the County Court of Coahoma County, Mississippi. Finding the motion well taken, this court acknowledges that it has no subject matter jurisdiction over the matter at bar. Therefore, the plaintiff's motion to remand this cause to the County Court of Coahoma County, Mississippi will be granted.

DISCUSSION

This tort action was originally filed in the County Court of Coahoma County, Mississippi on December 15, 1994. In his complaint, the plaintiff "demanded judgment of, from and against the defendant, in the amount of \$50,000.00 as actual and punitive damages, together with all costs herein."<sup>1</sup> Defendant FMC Corporation removed this action to this court on January 18, 1995.

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<sup>1</sup> The jurisdiction of a county court in Mississippi is "jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of the thing in controversy shall not exceed, exclusive of costs and interests the sum of fifty thousand dollars (\$50,000.00) . . ." Miss. Code Ann. § 9-9-21 (1972). The court notes that the plaintiff's demand is intended to include both compensatory and punitive damages.

Plaintiff filed the motion to remand presently before this court on January 24, 1995.

No federal question jurisdiction has been asserted by the parties. The matter in dispute is whether this case satisfies the requirements of federal law to allow for the application of diversity jurisdiction pursuant to 28 U.S.C. § 1332. The arguments of counsel center not around the diversity of the parties, but rather the jurisdictional amount involved. In order to invoke diversity jurisdiction, one requirement is that the amount in controversy be in excess of \$50,000.00.

The determination that must be made is whether this court would have had original jurisdiction to hear this action if the case had been filed here instead of state court. Grubbs v. General Electric Credit Corp., 405 U.S. 699, 702, 92 S.Ct. 1344, 1347, 31 L.Ed.2d 612 (1972); 28 U.S.C. § 1332. To determine whether this jurisdiction existed, "the general federal rule has long been to decide what the amount in controversy is from the complaint itself, unless it appears or is in some way shown that the amount stated in the complaint is not claimed 'in good faith.'" Horton v. Liberty Mutual Insurance Company, 367 U.S. 348, 353, 81 S.Ct. 1570, 1573, 6 L.Ed.2d 890 (1961).

Since in the present case plaintiff argues that he has plead an amount **below** the jurisdictional amount, it is the defendant, as the party asserting federal jurisdiction, who bears the burden of

showing that the plaintiff acted in bad faith in asserting his claim. Asociacion Nacional De Pescadores v. Dow Quimica, 988 F.2d 559, 563 (5th Cir. 1993). The defendant appropriately concedes that it, as the party asserting federal jurisdiction in this cause, has the burden of proof to establish such jurisdiction, i.e., that the plaintiff's claim is in excess of this court's jurisdictional amount. Jernigan v. Ashland Oil Co., 989 F.2d 812, 815 (5th Cir. 1993); Walker v. Federal Deposit Insurance Corp., 970 F.2d 114, 119 (5th Cir. 1992). The specifics of the extent of the burden borne by the defendant in this case are uncertain in the Fifth Circuit<sup>2</sup>, but in the case at hand, this uncertainty does not prevent a finding by the court in this matter.

This court need not delve into the potential merits of the plaintiff's claim in this cause, and thereby may avoid facing the unresolved Fifth Circuit burden on the defendant in this matter.

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<sup>2</sup> The Fifth Circuit did resolve this issue at one point, choosing to place a heavy burden upon the defendant. Kliebert v. Upjohn Co., 915 F.2d 142, 146 (5th Cir. 1990) ("To establish plaintiff's bad faith and sustain federal court jurisdiction in this case we hold, therefore, that the defendants [are] required to establish that the plaintiff would, if successful, recover at least the minimum jurisdictional amount.") In contrast, Judge Jolly opined in his dissent that a better standard would be one where the defendant need only show that the plaintiff's claim was **probably** in excess of the jurisdictional amount. Kliebert, 915 F.2d at 147. However, this decision does not bind this court as precedential authority, in that the decision was later vacated by the Fifth Circuit. Kliebert v. Upjohn Co., 923 F.2d 47, 47 (5th Cir. 1991). The case was later settled by the parties, and the court never readdressed the issue. Kliebert v. Upjohn Co., 947 F.2d 736, 737 (5th Cir. 1991).

A plaintiff such as Mr. Foster may avoid federal diversity jurisdiction merely by pleading damages below the jurisdictional amount, and waiving his claim to any greater amount. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. at 289, 58 S.Ct. at 590; Shaw v. Dow Brands, 994 F.2d 364, 366 (7th Cir. 1993); See 14A C. Wright & A. Miller, Federal Practice and Procedure § 3275, p.418-419 (2d ed. 1985). There has been no express waiver by the plaintiff, although considering the facts in the case at bar, the plaintiff has certainly done so implicitly.

The plaintiff first pled his claim in the Coahoma County Court, which does not have subject matter jurisdiction of matters involving an amount in controversy in excess of \$50,000.00<sup>3</sup>. The

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<sup>3</sup> The defendants argue that juries in Mississippi County Courts are free to render verdicts in excess of the jurisdictional amount of that court. It cites as its sole authority the decision of Barnes v. Rogers, 41 So.2d 58 (Miss. 1949). The Barnes decision is inopposite to the case at bar. In Barnes, the plaintiff sought a partition of property valued at the time of filing at \$1,000.00, which was then the upward jurisdictional limitation of the County Court. During the pendency of the action, the market value of the property appreciated to \$1,200.00. The County Court rendered a judgment in the amount of \$1,200.00, which was upheld by the Mississippi Supreme Court. The court noted that the County Court's jurisdiction was proper at the time of filing, stating that:

[I]t is well established as a general rule that jurisdiction once acquired is not defeated by subsequent events, even though they are of such character as would have prevented jurisdiction from attaching in the first instance.

Barnes, 41 So.2d at 60. There is nothing before this court to indicate that there will occur, or that there have occurred, events which increase the amount of damages incurred by the plaintiff which he did not contemplate before filing in County Court.

defendant argues that the plaintiff will not be bound by his prayer for relief, and that the County Court jury could return a verdict in excess of that amount<sup>4</sup>. In support of this argument, the defendant cites Mississippi Rule of Civil Procedure 54(c), as well as the Mississippi Supreme Court decision of Barnes v. Rogers, 41 So.2d 58, 60 (Miss. 1949). However, Rule 54(c) lends the defendant no support, in that the rule provides in part:

[E]very final judgment shall grant the relief to which the party in whose favor it is rendered is entitled by the proof and **which is within the jurisdiction of the court to grant**, even if the party has not demanded such relief in his pleadings; however, **final judgment shall not be entered for a monetary amount greater than that demanded in the pleadings or amended pleadings.**

Miss. R. Civ. P. 54(c). The rule plainly provides that the plaintiff is incapable of recovering more than the amount demanded in his pleadings. In this case, the demand was for the exact amount of \$50,000.00, and Mr. Foster's potential recovery is so bound.<sup>5</sup> As well, the plain language of Miss. R. Civ. P. 54(c)

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<sup>4</sup> This court does not base its decision on the probability of recovery in the Coahoma County Court, for generally the proper inquiry in these types of cases is what recovery the plaintiff would likely receive **if he had originally filed in the federal court.** Grubbs v. General Electric Credit Corp., 405 U.S. 699, 702, 92 S.Ct. 1344, 1347, 31 L.Ed.2d 612 (1972); 28 U.S.C. § 1332. Instead, this court's decision is based on a waiver of recovery by the plaintiff of any excess amount above the recover he could receive in the Coahoma County Court.

<sup>5</sup> The defendant points out, and this court is fully aware, that it is not an uncommon practice in Mississippi courts for a plaintiff to amend his demand for damages even after the jury has returned a verdict. While the issue is ultimately for the Coahoma County Court to decide, it is this court's opinion that

binds the plaintiff's recovery in another manner - the rule denies a recovery by the plaintiff of an amount in excess of \$50,000.00 (the jurisdictional maximum) in the Coahoma County Court.<sup>6</sup>

By bringing his claim in the Coahoma County Court, the plaintiff has effectively waived any recovery he might have in excess of \$50,000.00, and therefore deprives this court of subject-matter jurisdiction. In that Miss. R. Civ. Pro. 54(c) prohibits a Mississippi County Court from rendering a judgment in excess of its jurisdictional amount, regardless of amended pleadings<sup>7</sup>, the plaintiff is bound by that upward limit of monetary recovery.

This court finds that the plaintiff has waived any potential recovery beyond the jurisdictional limits of the Coahoma County Court, and has thereby deprived this court of subject-matter jurisdiction. The plaintiff's motion to remand will be granted.

A separate order in accordance with this opinion shall issue this day.

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the plaintiff has waived any right to make such an amendment by taking the position that removal to this court is improper. In any event, this determination is irrelevant in that the plaintiff is barred from recovering any amount exceeding the jurisdictional limitations of the County Court. See, infra.

<sup>6</sup> It is the opinion of this court that this provision of Rule 54(c) restricts the plaintiff's recovery regardless of amendments to his pleadings.

<sup>7</sup> The court does recognize that amended pleadings would create more of a problem if this case were originally filed in a Mississippi Circuit Court, where there is no upward jurisdictional limitation.

THIS \_\_\_\_\_ day of February, 1995.

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United States District Judge

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CORD FOSTER

PLAINTIFF

vs.

No. 2:95cv008-D-O

FMC CORPORATION

DEFENDANT

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

Pursuant to a memorandum opinion issued this day, it is hereby  
ORDERED THAT:

1) the plaintiff's motion to remand this matter to the  
County Court of Coahoma County, Mississippi is hereby GRANTED, in  
that this court has no subject matter jurisdiction over this cause.

2) the plaintiff's request for sanctions in this matter is  
hereby DENIED.

3) the plaintiff's request for reference of his motions to  
the Magistrate Judge is DENIED as moot.

All memoranda, depositions, affidavits and other matters  
considered by this court in granting the plaintiff's motion to  
remand are hereby incorporated and made a part of the record in  
this cause.

SO ORDERED, this \_\_\_\_ day of February, 1995.

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United States District Judge